

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 180 OF 2006

and

CMP.NO.1420 OF 2006

1.Ramanathan Chettiar

2.Vasantha

...Petitioners/Petitioners.

Vs.

Ramu Gounder

...Respondent/Respondent.

This Civil Revision petition is filed under Section 115 C.P.C. against the order and decretal order of the learned II Additional Sub Judge, Villupuram dismissing the Interlocutory application in I.A.No.272 of 2004 in A.S.No.254 of 2003 dated 15.3.2005.

For Petitioner : Mr.C.R,Krishnamoorthy

For Respondent : Mr.R.Sunil Kumar

O R D E R

An order of the Second Additional Subordinate Judge at Villupuram made in I.A.No.272 of 2004 for appointment of Advocate Commissioner, pending appeal in A.S.No.254 of 2003 is the subject matter of challenge before this Court.

2. The Court heard the learned counsel for the petitioners as well as for the respondent.

3. Originally, a suit in O.S.No.149 of 1992 was filed by the revision petitioner for declaration of title in respect of 'A' schedule property and recovery of possession in respect of 'B' schedule property. On trial, the lower Court granted decree in respect of declaration, but denied the other relief of recovery of possession. Aggrieved plaintiff took it on appeal in A.S.No.254 of 2003 which is now pending on the file of the II Additional Subordinate Judge, Villupuram. Pending appeal, the instant application has been filed for appointment of Advocate Commissioner for the reasons set out in the affidavit filed in support of the petition. The said application was seriously disputed by the respondent herein. The said application was dismissed. Hence, the above Civil Revision Petition at the instance of the appellants before this

Court.

4. Learned counsel for the petitioner submitted that originally the Advocate Commissioner was appointed by the trial Court only to inspect the property and to file his report. But he did not note down the encroachment made by the respondent. Under such circumstances, the defect was not noticed by the trial Court and hence the lower Court denied the relief of possession. Under such circumstances, the appeal was filed and now it is pending before the Sub Court, Villupuram. Pending appeal, the instant application has been filed for appointment of Advocate Commissioner to note down the encroachment made by the respondent and hence the appellate Court should have appointed the Advocate Commissioner and hence the application should have been ordered.

5. The Court heard the learned counsel for respondents on the above contentions.

6. After a careful consideration of the rival submissions made, the Civil Revision Petition requires only an order of dismissal. Admittedly, pending suit, the Advocate Commissioner was appointed with a direction to note down the physical feature and to report the same and the Advocate Commissioner has done so. The trial Court decreed the suit to the extent of declaration of title, but denied the relief of recovery of possession. Aggrieved plaintiff, took it on appeal. It is brought to the notice of the lower Court and equally here also that the Advocate Commissioner appointed by the trial Court did not note down the extent of encroachment made and hence the Advocate Commissioner should be appointed by the appellate forum. This Court is at a loss to understand how the Advocate Commissioner can be appointed for that purpose. As per the directions of the trial Court, the Advocate Commissioner has noted down the physical feature of the properties in question. Under such circumstances, it is for the plaintiff/appellant to place necessary materials before the Court and to establish the effect that the respondent has encroached the properties in question before the lower Court. If such thing is done, it is nothing but securing evidence by way of appointment of advocate commissioner, which cannot be permitted.

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7. Under such circumstances, the lower Court is perfectly correct in dismissing the application. Hence, the Civil Revision petition is dismissed. No costs. Consequently, CMP.No.1420 of 2006 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

To

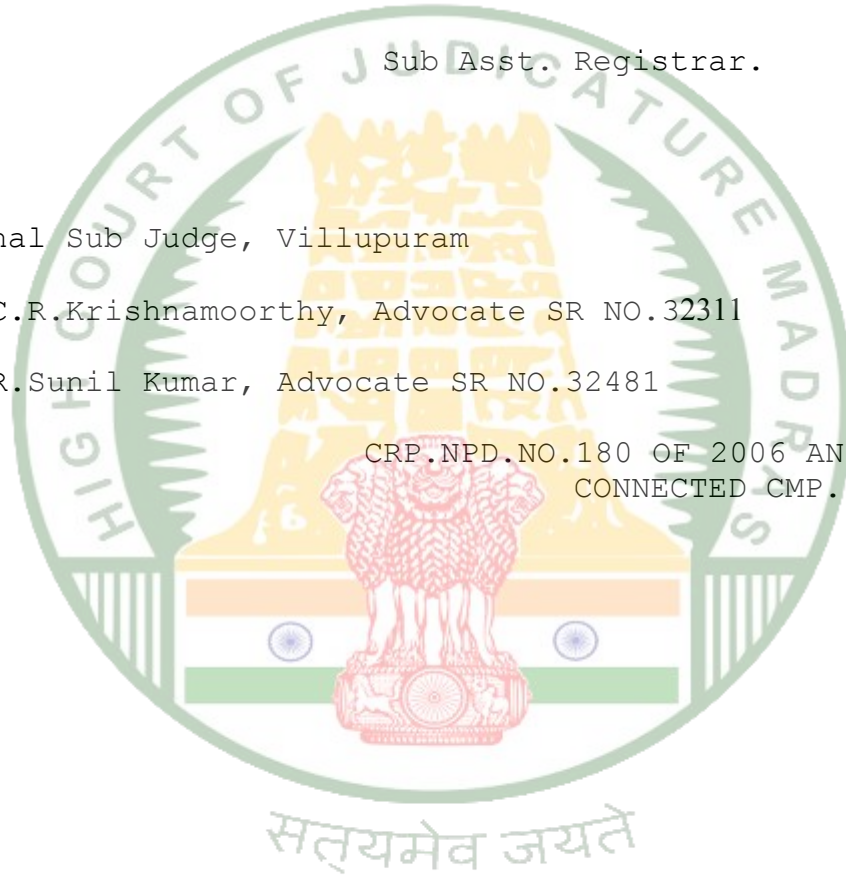
The II Additional Sub Judge, Villupuram

+ 1 CC To Mr. C.R.Krishnamoorthy, Advocate SR NO.32311

+ 1 CC To Mr. R.Sunil Kumar, Advocate SR NO.32481

CRP.NPD.NO.180 OF 2006 AND
CONNECTED CMP.

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